



**MINUTES  
TOWN OF NORTH HAMPTON  
ZONING BOARD OF ADJUSTMENT  
Tuesday, March 27, 2007  
North Hampton Elementary School at 5:45pm**

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*These minutes were prepared as a reasonable summary of the essential content of the meeting, not as a transcription. All exhibits mentioned in these minutes are a part of the Town Record.*

## **Attendance**

**Members present:** John Anthony Simmons, Chairman; Ted Turchan, Vice Chairman, Susan Smith, Jennifer Lerner and Richard Batchelder

**Alternates present:** Marc Lariviere

**Members Absent:**

**Staff present:** Richard Mabey, Building Inspector and Wendy Chase, Recording Secretary

## **Organizational Meeting**

Ms. Susan Smith was sworn in as a reappointed full member to the Zoning Board of Adjustment.

Mr. Richard Batchelder was sworn in as a full member to the Zoning Board of Adjustment.

Mr. Ron Dupuis was sworn in as an alternate member to the Zoning Board of Adjustment.

Mr. Marc Lariviere was sworn in as an alternate member to the Zoning Board of Adjustment.

Mr. Simmons thanked each member for their willingness to serve on the Board.

## **Preliminary Matters; Procedure; Swearing in of Witnesses; Recording Secretary Report**

Mr. Simmons referred to the following correspondence received by the Board:

1. Lorman Education Services is holding a one-day seminar on advanced Zoning and Land Use in New Hampshire on June 25, 2007. Mr. Simmons advised the members of the Board that if they would like to attend to contact Ms. Chase and also asked that Ms. Chase find out where the seminar will be held and circulate that information to the Board.
2. Mr. Simmons advised the members to put the correspondence received from the Conservation Commission regarding Greystone Village in their current GFI case packets and reminded them that he will be recusing himself from that case.
3. Letter from Sharon Sweeney in support of Joseph Walsh's case.

Mr. Simmons explained that there was a copy of the Rules of Procedure available for review.

Mr. Simmons Swore in Witnesses. Mr. Joseph Walsh objected to the Oath stating "In God We Trust". Mr. Simmons swore in Mr. Walsh separately using a different Oath.

Ms. Chase reported that the meeting was properly posted at the Library, Town Clerk's Office and Town Office and was legally posted in the March 15, 2007 edition of the Hampton Union.

Mr. Simmons read Section II.A. of the Rules of Procedure:

*Annually, the Full-Time Members of the Board shall elect Officers at the first regular meeting, which occurs following action taken by the Board of Selectmen to appoint a "Full-Time Board Member(s)" and/or "Alternate(s)".*

Mr. Simmons informed the Board that the Board of Selectmen appointed the ZBA members at their meeting last night.

**Ms. Smith moved and Mr. Turchan seconded the motion to nominate Mr. Simmons as Chairman to the Board.**

**Mr. Simmons moved and Ms. Smith seconded the motion to nominate Mr. Turchan as Vice Chairman to the Board.**

With no further nominations, Mr. Simmons closed the nominations.

**The vote was unanimous in favor of the motion to nominate Mr. Simmons as Chair (5-0).**

**The vote was unanimous in favor of the motion to nominate Mr. Turchan as Vice Chair (5-0).**

Mr. Simmons accepts the Chairmanship for the following year in honor of his newborn son, Andrew Daniel Simmons.

Mr. Turchan accepted the position as Vice Chairman.

## **Minutes**

**A motion was made and seconded to table the acceptance of the March 19, 2007 Planning and Zoning Boards joint meeting minutes.**

**The vote was unanimous in favor of the motion (5-0).**

**The February 20, 2007 minutes were reviewed.**

**Mr. Simmons moved and Ms. Lermer seconded the motion to accept the February 20, 2007 minutes.**

**The vote was unanimous in favor of the motion (5-0).**

## **Rules of Procedure**

Mr. Simmons recommended emendations to the Rules of Procedure (1) II. B. change Chairperson to Chair (2) delete VI. B., and (3) delete VII. H.

**Mr. Simmons moved and Mr. Turchan seconded the motion to make the recommended changes to the Rules of Procedure.**  
**The vote was unanimous in favor of the motion (5-0).**

## **Old Business**

**2007:02 – GFI, North Hampton, LLC**, 133 Pearl St Suite 400, Boston, MA. The applicants request a Variance from the provisions of Article III, Section 302 (25) and Article IV, Section 405 to allow pre-site built housing units in a manufactured housing park rather than manufactured housing units. Property location: 223 Lafayette Road, zoning district R-3 and I- B/R, M/L 021-001-000. This application is continued from the February 20, 2007 meeting.

In attendance for this application:  
Attorney Pelech, Law Offices of Wholey & Pelech

Mr. Simmons recused himself from case #2007:02. Mr. Turchan assumed the Chair.

Attorney Pelech requested that Case #2007:02 be continued to the April 17, 2007 meeting. Ms. Smith asked whether or not the applicant intends to go forward with this application in April if the continuation is granted. Attorney Pelech said that GFI would either proceed with their case on April 17<sup>th</sup> or withdraw completely.

**Ms. Lermer moved and Mr. Batchelder seconded the motion to continue case #2007:02 to the April 17, 2007 meeting.**

Mr. Simmons assumed the Chair.

## **New Business**

**2007:05 – Robert & Laura Milliken**, 39 Chapel Road, North Hampton. The applicants request an appeal from a decision of an Administrative Officer regarding the erection of a building on a lot, which currently has no road frontage and request variances from (1) Article IV, Section 406.2 to allow a structure to be erected on an existing lot of record that has not been held in separate ownership from an adjoining lot and (2) from Article IV, Section 406.6 to allow the construction of a structure on a lot with no frontage on a town street. The Applicants in the alternative seek a variance from Article IV, Section 406.9 to allow a lot line relocation creating a back lot having frontage of 30 feet where 40 feet are required. The Applicants in the alternative seek a variance from Article IV, Section 406 to allow creation of a lot with 30 feet of frontage where 175 feet are required. Property location: 9 & 15 Maple Road, zoning district R-2, M/L 006-128, 129 & 130.

In attendance for this application:  
Attorney Pelech, Law Offices of Whole & Pelech  
Corey Coldwell, Ames MSC  
Robert Milliken, Owner

Attorney Pelech explained that the applicant is proposing a lot-line relocation. The number of lots will not change and remain as three.

Mr. Coldwell explained that he surveyed all three lots pertaining to this application and they are all lots of record. He further explained the following:

Currently the three lots referred to as Tax Map 006, lot 128, 129 and 130 are as follows:

- Tax Map 006, lot 128 has 4.27 acres with no frontage.
- Tax Map 006, lot 129 has 3.70 acres with 220 feet of frontage.
- Tax Map 006, lot 130, owned by the Dowd Family Revocable Trust, has 1.29 acres with 294.77 feet of frontage.

The Applicant's proposal for a lot line adjustment will result in the following if approved:

- Tax Map 006, lot 128 will have 30.76 feet of frontage, making the lot more conforming.
- Tax Map 006, lot 129, acreage will decrease from 3.70 acres to 2.21 acres and frontage will decrease from 220 feet to 215 feet remaining as a conforming lot.
- Tax Map 006, lot 130 acreage will increase from 1.29 acres to 1.71 acres, making the lot more conforming.

Mr. Coldwell stated that by creating 30.76 feet of frontage for Tax Map 006, lot 128 it will allow for a large driveway while leaving room on the sides for snow storage and plantings. He also informed the Board that the applicant has an agreement with the Dowd Family Trust to plant 6' high plantings to provide screening for their house as depicted on the proposed plan.

Mr. Simmons inquired whether or not there were any structures on lots 128 and 129 currently. Mr. Milliken explained that he relocated a barn and it meets current setback requirements and meets setback requirements in the proposed plan as well.

Mr. Coldwell opined that his client's proposal does not fall under the backlot subdivision provisions because the proposal is not a proposed subdivision but rather a proposed lot line adjustment.

Sandra Woodworth, an abutter to the Milliken property was sworn in by Mr. Simmons.

Mr. Coldwell explained that there is no easement of record currently on the back lot 128 and argued that there is a New Hampshire law that says you can not create a landlocked parcel so that there had to have been access to that lot at some point in time. Attorney Pelech described it as an *easement by necessity* whereas there would be an easement on a piece of property that would connect a landlocked piece of property to the nearest road.

Attorney Pelech read aloud the applicants answers to the five criteria of the Boccia Analysis and determined that the applicant would like to request a variance to allow thirty feet of frontage on the backlot where forty feet is required.

Ms. Smith asked the applicant where he proposed to build. Mr. Milliken answered that he intends on building a house on each lot. He has not yet determined where he will build on the rear lot if approved.

Ms. Woodworth voiced concerns on the future development of lot 128, which abuts her property. She explained that she has met with Mr. Milliken and discussed her concerns of lights from a

potentially large home affecting her quality of life. She also stated that Mr. Milliken is willing to work with her but not willing to put anything in writing.

Mr. Milliken stated that he is sensitive to Ms. Woodworth's concerns but doesn't know at this time where on the rear lot the proposed house will be built.

Mr. Simmons asked if Attorney Pelech had copies of any case law citations regarding *easements by necessity*. Attorney Pelech did not have any examples with him but offered to produce such information to the Board. Attorney Pelech pointed out that Mr. Milliken could create an easement across his front lot to the rear lot, since he owns both lots.

Mr. Simmons opined that the application is not as legally simple as most and suggested that the case be tabled to the April 17, 2007 meeting to give the Board a chance to digest the application and each section of the ordinance that it pertains to and it would give Attorney Pelech time to produce case law examples on the *easement by necessity* argument for the members to review.

Mr. Turchan suggested that the Board proceed with the case and allow the proposed lot line adjustment, which would result in creating 30.76 feet of frontage on the rear lot and then consider granting a variance to Section 406 to allow 30.76 feet of frontage where 175 feet is required.

Ms. Smith questioned whether or not it was the intent and spirit of the ordinance regarding Mr. Turchan's suggestion. Mr. Simmons agreed and said that the Board needed to consider the five criteria for the variance request and to look at the ordinance as a whole to try and figure out what the applicant plans to accomplish. He opined that the Board should thoughtfully consider each section that was requested by the applicant.

The Board reviewed the subdivision regulations concerning lot line adjustments. It states that minor lot line adjustments do not create additional lots or increase the development potential of a lot. Mr. Simmons stated that the application does not qualify as a lot line adjustment application because the applicant's proposal is to create an additional lot and increase the development potential.

**Ms. Lermer moved and Mr. Batchelder seconded the motion to table case 2007:05 to the April 17, 2007 meeting.**

Mr. Simmons opined that the Board owes the applicant a well thought out decision.

Ms. Smith asked the applicant how long he owned the property and Mr. Milliken answered "since December 2006".

Attorney Pelech asked if the Board needed him to provide any new information prior to the April 17, 2007 meeting. Mr. Simmons requested copies of case law citations regarding *easements by necessity*. Ms. Lermer added that Attorney Pelech was welcome to submit any new material pertaining to this case. Ms. Smith said that she would prefer that the material be applicable to the Town of North Hampton.

**The vote was unanimous in favor of the motion (5-0).**

The Board recessed at 7:40pm.

The Board reconvened at 7:57pm.

**2007:06 – Joseph Walsh**, 128 Post Road, North Hampton. The applicant requests a variance to Article IV, Section 406 to construct a two-car garage 11.23 ft. from the setback where 25 ft. is required. Property location: 128 Post Road, zoning district R-1, M/L 014-139-000.

In attendance for this application:  
Joseph Walsh, Owner

The Board was in receipt of a letter from abutting neighbor Sharon Sweeney in support of Mr. Walsh’s request for a variance.

Mr. Walsh explained that currently he has a one-car garage and wishes to reconstruct it and expand it to a two-car garage. He further explained that the current garage does not meet the required 25-foot setback; it is roughly 19-feet from the property line. He further explained that the side of the house where the proposed garage will be located abuts a driveway leading to a back lot.

Mr. Batchelder questioned if Mr. Walsh planned to cut down the pine trees on the side of his property. Mr. Walsh explained that the pine trees are on his neighbor’s property but overhang on his and is planning to discuss his concerns about the trees overhanging with that neighbor.

Case #2007:06 – Joseph Walsh, 014-139-000

Findings of Facts		Not Contrary to Public Interest		Unnecessary Hardship Exists		Consistent w/Spirit of Ordinance		Substantial Justice Will be Done		Will Not Diminish Surrounding Properties	
		YES	NO	YES	NO	YES	NO	YES	NO	YES	NO
Chair	Simmons	X		X		X		X		X	
Vice Chair	Turchan	X		X		X		X		X	
	Lermer	X		X		X		X		X	
	Smith	X		X		X		X		X	
	Batchelder	X		X		X		X		X	
Alternate	Marston										
Alternate	Lariviere										
Alternate	Dupuis										

**Mr. Turchan moved and Ms. Smith seconded the motion that the Board approve a variance from Section 406 for case 2007:06 to construct a two-car garage 11.23 feet from the side setback, property location 128 Post Road, M/L 014-139-000. The vote was unanimous in favor of the motion (5-0).**

Mr. Simmons reminded Mr. Walsh of the thirty-day appeal period and cautioned him to wait on construction until after those thirty days.

**A motion was made and seconded to adjourn at 8:10pm.  
The vote was unanimous in favor of the motion (5-0).**

Respectfully submitted,

Wendy V. Chase  
Recording Secretary